**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

**Sales Tax Revision No. 42 of 2003**
**(Old No. 822 of 1991)**

Commissioner of Sales tax,
U.P. Lucknow .....Revisionist

**Versus**

Executive Engineer
P.W. D., Pithoragarh ..... Opposite Party

Sri Subhash Upadhayaya, Brief Holder for the State.

**Hon'ble J.C. S. Rawat, J.**

1. This revision has been preferred under Section 11 (1) of U.P. Sales Tax Act, 1948 against the order / award dated 20.02.1991, passed by the Sales Tax Tribunal, Haldwani.

2. Brief facts of the case are that the assessee is the P.W. D.. The assessee had supplied cement to its contractor during the year 1983-84 for the completion of the contract work and payments were received in respect thereof but neither any taxable turn over was admitted nor any tax was deposited. But the Assessing Authority had fixed the tax upon the turnover of the assessee while treating the supply of cement as 'sales'. Feeling aggrieved by this, the assessee preferred an appeal u/s 9 of the U.P. Sales tax Act and the appeal was dismissed by the Assistant Commissioner (Judicial) Sales Tax. Feeling aggrieved by the said order, the assessee again preferred an appeal before the Sales Tax Tribunal u/s 10 of the Sales Tax Act. The learned

Tribunal allowed the appeal holding that the assessee was not liable to pay any tax in respect of the supply made to its contractor. The Sales Tax Department has preferred this revision before the Allahabad High Court in the year 1991, from where it has been received by transfer by this Court under Section 35 of the U.P. Reorganization Act, 2000, for the disposal.

3. The question involved in this revision is as under:-

*Whether on the facts and circumstances of the case, the Sales Tax Tribunal was legally justified to hold that the supply of cement made to P.W. D. did not amount to sale despite the ruling to the contrary by the Hon'ble Supreme Court in* ***N.M. Goel & Co. Vs. Sales Tax Officer Rananand Gaon and another 1990 UPTC 865 S.C.?***

4. This revision is squarely covered by the judgment and order dated 25th May, 2006 passed by this court in **Trade Tax Revision No. 55 of 2006, Sri Akhil Bharati Maheshwari Seva Sadan Vs. The Commissioner Trade Tax, Uttaranchal** wherein it has been held that the transaction between the revisionist and the contractor come within the meaning of the word 'sale' under the provisions of 2(h) of the Act. The said question was answered in favour of the department.

5. In terms of the above judgment, the revision is disposed of accordingly.

6. All applications pending in this case are stand disposed of in terms of the judgment.

**(J.C.S. RAWAT, J.)**

15th July, 2006.
Shiv